IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1781 OF 2006.

Pradeep Purushottam Thakkar
Age: 41 yrs., Indian Inhabitabt,
residing at 303, Land Mark Coop.
Hsg.Society, Devi Dayal Road,
Mulund (W), Mumbai 400 080. ... Petitioner.

Versus.

1. Shri R.S.Bhalla
2. Archana Bhalla.
3. Shri Maneesh Bawa.
4. Shri Sumeet Bawa.
   All residing at S-3, 22/A,
   Panchsheel Park, New Delhi-17,
   having their office at BPS
   Estate, Devidayal Road,
   Mulund (W), Mumbai-80.
5. State of Maharashtra. ... Respondents.

Shri Surel S.Shah with Mrs.Gauri S.Shah for the Petitioner.

Shri H.H.Ponda for the Respondents Nos.1 to 4.

Shri S.V.More, A.P.P. for the State.

CORAM : ABHAY S.OKA, J.

DATED : 11th October, 2006.

ORAL JUDGMENT.:

1. Heard the learned Counsel appearing for the parties. By this petition under Article 227 of the Constitution of India, the Petitioner has taken exception to the order dated 5th August 2006 passed by the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai. The Petitioner filed a private complaint alleging commission of offences under sections 417, 420, 500 and 511 read with section 34 of the Indian Panel

Code. The first to fourth Respondents herein have been arraigned as Accused in the said complaint. Process was issued by the learned Magistrate on the said complaint.

2. An application was filed by the first and second Respondents herein before the learned Magistrate praying that permission to renew their passport be granted for full validity period and a permission may be granted to the said Respondents to go abroad as and when required.

The operative part of the impugned order reads thus:

> ". Application is allowed as prayed.
> Renewal of passport is allowed for a period of
> one year on following conditions:
> . Applicant shall not leave India
> without prior permission of this Court. They
> shall furnish details of their proposed
> programme. They shall inform this court about
> departure as well as arrival."

3. Shri Shah appearing for the petitioner submitted that the learned Metropolitan Magistrate had no jurisdiction to give a direction to renew the passports. He submitted that it is the function of the authorities under the Passport Act, 1967 (hereinafter referred to as the said Act of 1967) to examine the case for renewal of the passports and either to renew the passport or decline to renew the passports. Reliance is placed by

the learned Counsel appearing for 1st Respondent and the 2nd Respondent on a decision of this Court in the case of Deepak Swarkasingh Chhabria v/s. Union of India and another, (AIR 1997 Bombay page 181) as well as the decision of another learned Single Judge in the case of Shayam Dwarkadas Chabria V/s. The Regional Passport Officer and another (2000 All MR (Cri) 5). He placed reliance on the Notification dated 25th August 1993 issued by the Ministry of External Affairs and submitted that the case is fully covered by the said Notification. While responding to the aforesaid submissions, Shri Shah appearing for the Petitioner submitted that the aforesaid two decisions of the learned Single Judges of this Court are based on the said Notification dated 25th August 1993 which applies only to the grant of a fresh passport. He submitted that as the Notification dated 25th August 1990 relates to the grant of fresh passport, the same will not apply in a case where the passport is to be renewed. He submitted that even section 6 of the Passport Act, 1967 (hereinafter referred to as "the said Act") and in particular sub-section (2) thereof deals with the issue of fresh passport. He submitted that the said decisions are per incuriam as the said decisions have ignored the express provisions of law.

4. I have considered the submissions. Section 6(2) of the said Act reads thus:

6. Refusal of passports, travel documents,

etc.

(2). Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under Cl.(c) of sub-section (2) of Sec.5 on any one or more of the following grounds, and on no other ground, namely;

. (a) that the applicant is not a citizen of India;

. (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

. (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

. (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

. (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to

imprisonment for not less than two years;

. (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India;

. (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court;

. (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

. (i) that in the opinion of the Central Government the issue of passport or travel document to the applicant will not be in the public interest.

Section 22 of the said Act will also be relevant, which reads thus:

22. Power to exempt. - Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, by notification in the official Gazette and subject to such conditions, if

any, as it may specify in the notification -

. (a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder;

. (b) as often as may be, cancel any such notification and again exempt, by a like notification the person or class of persons to the operation of such provisions."

5. A perusal of the Notification dated 25th August 1993 shows that the same has been published in the Gazette of India and the same was issued in exercise of powers conferred by clause (a) of section 22 of the said Act. It will be necessary to refer to the decision of the learned Single Judge in the case of Deepak Dwarkasingh Chhabria (supra). The relevant part of paragraph 10 of the said decision reads thus:

"10. In view of the aforesaid notifications by the Central Government, **it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications.** In other words, an application of passport is not

liable to be refused on the ground of pendency of criminal case if the application obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply to the concerned Criminal Court for permission to travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification." (Emphasis supplied)

In further part of paragraph 10, the learned Single Judge has held thus:

. "Accordingly, it is directed that in all cases covered by section 6(2)(f), the passport authority shall forthwith inform the applicant about his right to apply to the concerned Criminal Court for permission to travel abroad in terms of the notification dated 25th August

1993. In case the applicant demands a copy of the notification, same shall be supplied by the passport authority subject to payment of charges. Needless to mention that it will be open for the applicant to approach the Criminal Court, where criminal case against him is pending, for permission to travel out of India. **Even if he has not received summons from the Criminal Court, it will be open for the applicant to apply to that Court for a limited purpose of issuing the necessary orders for grant and/or renewal of passport.** Considering the fact that the matter involves the fundamental right of the applicant, the concerned Court shall decide such application as expeditiously as possible and preferably within four weeks from the date of receipt of such application, after notice to the prosecution. In case the Criminal Court passes an order for issuance of passport, the passport authority shall forthwith issue the passport to the applicant subject to the terms and conditions mentioned in the notification but without making any endorsement on the passport about the pending criminal case."

(Emphasis supplied).

The same is the view taken by the other learned Single

Judge in the case of Shayam Dwarkadas Chabria (supra).

6. It will be necessary to refer to the Rules framed under the said Act, viz. the Passport Rules, 1980. Rule 5 of the said Rules prescribed the form of application which is to be filled in for issue of a passport or travel document or for renewal thereof. Rule 12 provides for duration of the passport or travel document.

7. On a plain reading of the provisions of the said Act and the said Rules it is obvious that the power to renew the passport is not different from the power to issue passport or travel document. Section 5 deals with the application for passport or travel document and other orders. It is obvious that the reference to the application in section 5 is also to the application for renewal of the passport. It is thus apparent that sub-section (2) of section 6 will have application even in a case where existing passport is to be renewed. If the submission of Shri Shah is accepted then the prohibition under sub-section (2) of section 6 will not apply where the existing passport is to be renewed and thus even if proceedings in respect of an offence alleged to have been committed by an Applicant are pending before a Criminal Court, passport authority will be in a position to renew the passport without the permission of the concerned Court. Such an

interpretation can never be accepted. Therefore, the decisions of the learned Single Judge will certainly have application to the facts of the case. The effect of the notification dated 25th August 1993 is that the passport authorities can consider the application for renewal for a period, if specified in the order of the Court and if not specified, for a period of one year. It is obvious that the power of the Criminal Court is to grant permission to the passport authorities to renew passport for a period of one year provided otherwise the Applicant-accused is entitled to the renewal of the passport. To that extent the impugned order will have to be modified.

8. Hence the following order is passed:

i) The impugned order is modified and it is directed that :

a) It will be open to the authorities under the Passport Act, 1967 to consider the application made by Accused Nos.1 and 2 for renewal of their passports for a period of one year and bar of section 6(2)(f) of the said Act of 1967 will not apply on the basis of pendency of Criminal Case No.67/S of 2003 pending in the Court of the learned Metropolitan Magistrate, 27th Court at

Mulund. Pendency of the said case will not prevent the authorities from renewing the Passport of the Respondents Nos.1 and 2 for a period of one year if the said Respondents are otherwise entitled to the renewal of passports.

b) It is made clear that if any other criminal proceedings as contemplated by clause (f) of sub-section (2) of section 6 of the Passport Act, 1967 are pending against the accused Nos.1 and 2 in any other Court, Accused Nos.1 and 2 will have to obtain appropriate permission from the concerned Courts.

c) The permission is granted subject to condition that the Accused Nos.1 and 2 shall not leave India without the prior permission of the trial Court and they shall furnish details of their programme of proposed visit including the particulars of the departure as well as the arrival.

ii) Petition is disposed of in the above terms.

iii) Wrt to be sent immediately.

Judge.